

16-cv-1054 (WMW/DTS)

EXHIBIT 4
(Filed Under Seal)

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 DISTRICT OF MINNESOTA
4

5 C.A. No. 16-cv-1054 (WMW/DTS)

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7 FAIR ISAAC CORPORATION,)

8 Plaintiff)

9 v.)

1 0 FEDERAL INSURANCE COMPANY AND ACE)

1 1 AMERICAN INSURANCE COMPANY,)

1 2 Defendants)

1 3 -----

1 4 CONFIDENTIAL TRANSCRIPT

1 5 ATTORNEYS' EYES ONLY

1 6

1 7 DEPOSITION OF MICHAEL SAWYER

1 8 October 2, 2018

1 9 Courtyard Marriott

2 0 35 Foxborough Boulevard

2 1 Foxborough, Massachusetts

2 2

2 3 *****

2 4 Court Reporter: Amie D. Rumbo

EXHIBIT

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<p>1 client phone calls in any database or anything</p> <p>2 like that.</p> <p>3 Q. So there was -- we've talked about</p> <p>4 this time lag between FICO finding out about the</p> <p>5 prospective merger and reaching out to FICO. Why</p> <p>6 didn't anybody at FICO, to your knowledge, reach</p> <p>7 out sooner, just given -- we've gone through some</p> <p>8 of these e-mails that, from FICO's perspective,</p> <p>9 was also a revenue opportunity. So why was there</p> <p>10 such a delay?</p> <p>11 MR. HINDERAKER: Objection.</p> <p>12 A. I would reflect the testimony</p> <p>13 earlier when I answered that question.</p> <p>14 Q. So why was there such a delay?</p> <p>15 MR. HINDERAKER: Objection. Asks</p> <p>16 for speculation. Outside of the scope of the</p> <p>17 witness's knowledge.</p> <p>18 A. I testified --</p> <p>19 Q. From your perspective?</p> <p>20 A. As I testified earlier, it's my</p> <p>21 understanding that from -- when organizations</p> <p>22 enter into a merger transaction like this, those</p> <p>23 firms have a process in place where they analyze</p> <p>24 the contracts that -- vendor contracts of the two</p> <p>Page 193</p>	<p>1 I was on site in Warren several</p> <p>2 times, I believe, meeting with other folks around</p> <p>3 those other products. And as part of those</p> <p>4 discussions, I got a sense of the time frame that</p> <p>5 they were looking at for the completion of the</p> <p>6 merger.</p> <p>7 Q. Do you have Exhibit 65 before you?</p> <p>8 It was redacted covered.</p> <p>9 A. Yes, I do.</p> <p>10 Q. Turn to page 2.</p> <p>11 A. Okay.</p> <p>12 Q. I'm referencing the last sentence</p> <p>13 of the first paragraph where it says, "The net</p> <p>14 result is that Chubb currently has a perpetual</p> <p>15 enterprise-wide license for the job and net</p> <p>16 version of the platform for use in the territory</p> <p>17 of the United States."</p> <p>18 You said that you had a discussion</p> <p>19 with Russ Schreiber about that issue before</p> <p>20 drafting the e-mail. And my question is when was</p> <p>21 that discussion with Schreiber?</p> <p>22 MR. HINDERAKER: Asked and answered</p> <p>23 multiple times. I object.</p> <p>24 A. So I don't know exactly when the</p> <p>Page 195</p>
<p>1 organizations that are coming together and</p> <p>2 proactively will engage with vendors to understand</p> <p>3 the vendor's position on the merger. And so our</p> <p>4 expectation from my understanding was we were</p> <p>5 hoping that Chubb would come to the table with us.</p> <p>6 Once we started to get more clarity</p> <p>7 around the date that the transaction might close,</p> <p>8 in the spirit of our relationship, we proactively,</p> <p>9 while not required to under the contract,</p> <p>10 proactively reached out to Chubb to engage in</p> <p>11 dialogue.</p> <p>12 Q. You said earlier that you reached</p> <p>13 out when you learned --</p> <p>14 MR. HINDERAKER: I'm sorry. Go</p> <p>15 ahead.</p> <p>16 Q. -- when you learned that the merger</p> <p>17 was more imminent. How did you learn that?</p> <p>18 A. So I can't pinpoint the specific</p> <p>19 conversation that I had right before that outreach</p> <p>20 to Elie, but I was in continual conversation with</p> <p>21 Henry Miroluz. As we pursued other deals and</p> <p>22 opportunities, Chubb was evaluating using some of</p> <p>23 FICO's other products and, as such, I was</p> <p>24 continually having dialogue with Henry on that.</p> <p>Page 194</p>	<p>1 conversation happened with Russ. I can -- based</p> <p>2 on the timeline here in this exhibit, you know,</p> <p>3 it's clear to me that we came back from holiday</p> <p>4 over the break. We still had not heard from Elie.</p> <p>5 It's likely that I had a conversation with Russ</p> <p>6 around this time about what's the next course of</p> <p>7 action we should do, given Elie has not responded</p> <p>8 to my original outreach, which was the -- you</p> <p>9 know, the genesis of writing that e-mail on the</p> <p>10 8th. And so I don't recall everything that was</p> <p>11 discussed during that time, but I would imagine</p> <p>12 that that's when I discussed it with Russ.</p> <p>13 Q. Do you recall that conversation</p> <p>14 with Schreiber, what was said?</p> <p>15 A. No, I do not.</p> <p>16 Q. Okay. Do you recall anything about</p> <p>17 it?</p> <p>18 A. I worked with Russ for nine years.</p> <p>19 I had daily dialogue with him multiple times per</p> <p>20 day. It's difficult for me to remember every</p> <p>21 conversation that I had with him, especially when</p> <p>22 you're going back two plus years now. So no, I</p> <p>23 don't. You know, it's -- it's a logical</p> <p>24 conclusion that I would have discussed it with him</p> <p>Page 196</p>

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<p>1 just based on the close nature of our working 2 relationship, but I can't recall that I called him 3 at 9:00 a.m. on a specific date or anything like 4 that.</p> <p>5 Q. Okay. Can you turn to Exhibit 69?</p> <p>6 A. 69. Yes.</p> <p>7 Q. The March 30th, 2016, attachment, 8 page 2.</p> <p>9 A. Okay.</p> <p>10 Q. At the end of the first paragraph, 11 Mr. Carretta says, quote, "Further, FICO had 12 notified its Chubb client contact prior to the 13 merger that consent was required," end quote. Do 14 you know what he's referencing?</p> <p>15 MR. HINDERAKER: Objection. Asking 16 for Mr. Carretta's intention.</p> <p>17 A. I do not. I can only speak to the 18 communications that I had with Chubb prior to the 19 merger and that communication was with Elie in 20 which I advised him that based on what we knew 21 about the potential merger, that 10.8 could apply. 22 You know, as I recall the events, given the merger 23 hadn't been completed at the time that I spoke to 24 Elie, you know, I would not have been definitive,</p> <p>Page 197</p>	<p>1 discovered what I believe to be a discrepancy 2 between the way that, you know, Chubb had 3 interpreted their license and the way that FICO 4 had been operating prior to that. At which point, 5 you know, my reading of the contract suggests that 6 the license was restricted by the territory 7 definition in the master license agreement, which 8 restricted to use in the United States or to the 9 United States territory.</p> <p>10 Q. Okay. Do you have Exhibit 47 11 before you?</p> <p>12 A. 47. Oh, here it is. Yes.</p> <p>13 Q. On the e-mail at the bottom of the 14 page, you state in an e-mail to Richard Hill, do 15 you not, quote, "They do have a global ELA for 16 Blaze," unquote?</p> <p>17 A. Yes, I see that.</p> <p>18 Q. All right. Did you ever inquire of 19 anybody at Chubb what corporate entity was using 20 Blaze?</p> <p>21 A. Not that I'm aware of, no.</p> <p>22 Q. Do you know anybody at FICO who did 23 that?</p> <p>24 A. No. I am not aware of that</p> <p>Page 199</p>
<p>1 right, in stating that it will apply, and so when 2 I read Tom's note, that last sentence in the first 3 paragraph, I do not believe that I would have been 4 the person that would have communicated that it is 5 required. I would have communicated that it is 6 possible that it will be required based on what we 7 know about the planned merger, so.</p> <p>8 Q. Can you turn to Exhibit 83. I'm 9 referencing the e-mail from Bill Waid to Tamra 10 Pawloski dated March 23rd, 2016. Do you see the 11 third paragraph where it states, quote, "Given 12 this fact, I see no other outcome than Chubb 13 extending Blaze Advisor to a global license," 14 unquote?</p> <p>15 A. Yes, I do see that.</p> <p>16 Q. Now, it was your opinion that they 17 already had a global license, right?</p> <p>18 MR. HINDERAKER: Objection. 19 Misstates testimony. Time frame. 20 Misleading.</p> <p>21 A. Yeah. As I've testified, over the 22 time of my employment at FICO, as I took over as 23 client partner sometime thereafter of the Chubb 24 account and upon reviewing the contracts, I</p> <p>Page 198</p>	<p>1 transpiring.</p> <p>2 Q. Okay. Finally on Exhibit 82, we're 3 looking at the criteria for sizing Blaze Advisor 4 applications. Why isn't the gross written 5 premiums one of the criteria?</p> <p>6 MR. HINDERAKER: Objection. Lack 7 of foundation.</p> <p>8 A. I don't know. You would have to 9 ask Bill Waid who generated the exhibit.</p> <p>10 Q. Okay. Would it be your testimony 11 that those are the -- when it says -- in the 12 second paragraph where it says, "Absent these 13 parameters, we can derive them from book of 14 business or other key business metrics," is it 15 your testimony that that includes gross written 16 premiums?</p> <p>17 A. So there is -- in what Bill has 18 shared here, right, with me, is a spreadsheet that 19 includes parameters. FICO also used a pricing 20 engine that is integrated with Salesforce. And as 21 part of that, there are drop-down fields that the 22 salesperson is responsible for completing. And, 23 you know, upon my departure from FICO, that was in 24 place, and gross written premium was one of the</p> <p>Page 200</p>

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<p>1 metrics that the salesperson was responsible for</p> <p>2 completing. So I can't speak to why it's not on</p> <p>3 this particular document, but in some of the other</p> <p>4 tools that FICO provided to the salespeople to</p> <p>5 price and scope engagements, it was a prominent</p> <p>6 criteria.</p> <p>7 Q. All right.</p> <p>8 MR. FLEMING: I have no further</p> <p>9 questions.</p> <p>10</p> <p>11 CROSS-EXAMINATION</p> <p>12 BY MR. HINDERAKER:</p> <p>13 Q. I just have the matter of</p> <p>14 clarification that I raised before, before --</p> <p>15 today earlier after one of the breaks. If we</p> <p>16 could go to Exhibit 54, please.</p> <p>17 MR. HINDERAKER: And I've asked the</p> <p>18 court reporter to pull up the question and</p> <p>19 answer that I want to see if there's reason</p> <p>20 to clarify. So if you could do that, please,</p> <p>21 and then read the two questions and the</p> <p>22 answers after Mr. Sawyer gets ready, and</p> <p>23 we'll go from there.</p> <p>24 A. Okay, I have the exhibit.</p> <p>Page 201</p>	<p>1 predecessors'?</p> <p>2 "ANSWER: As I testified earlier,</p> <p>3 I'm not sure of the date that I became aware</p> <p>4 of it, so I cannot say definitively one way</p> <p>5 or another. You know, I do not recall how I</p> <p>6 responded to Oliver and this e-mail."</p> <p>7 A. Okay. Yes. There is one</p> <p>8 clarification I would like to make in my response</p> <p>9 to that last question. My statement said I am not</p> <p>10 sure how I responded to Oliver. I am not certain</p> <p>11 that I did respond to Oliver. So it is not a --</p> <p>12 the question is not method of communication, it's</p> <p>13 both the question of whether I responded, and if I</p> <p>14 did, how I responded, and I am not certain that I</p> <p>15 responded to Oliver in any way in response to his</p> <p>16 e-mail.</p> <p>17 MR. HINDERAKER: Thanks. That's</p> <p>18 the only question I have.</p> <p>19 MR. FLEMING: All right. No</p> <p>20 follow-up.</p> <p>21 MR. HINDERAKER: Okay. All right.</p> <p>22 MR. FLEMING: Do we need to mark</p> <p>23 this confidential to all the documents marked</p> <p>24 attorneys' eyes only, et cetera?</p> <p>Page 203</p>
<p>1 THE COURT REPORTER: One moment.</p> <p>2 So, "question --</p> <p>3 MR. HINDERAKER: Are you there?</p> <p>4 THE COURT REPORTER: Yes.</p> <p>5 BY MR. HINDERAKER:</p> <p>6 Q. So Mr. Sawyer, looking at</p> <p>7 Exhibit 54, I want to direct your attention to the</p> <p>8 top of the exhibit and, in particular, to the</p> <p>9 sentence that Mr. Fleming pointed out or directed</p> <p>10 you to being, quote, "I know of no restrictions in</p> <p>11 the license that prevent them from doing so?"</p> <p>12 MR. HINDERAKER: And now with that</p> <p>13 in mind, I'd like to have the question that</p> <p>14 Mr. Fleming put and then your answers read</p> <p>15 back, please, to you.</p> <p>16 (Previous questions and answers read back as</p> <p>17 follows:)</p> <p>18 "QUESTION: And do you recall how</p> <p>19 you responded?</p> <p>20 "ANSWER: No, I do not.</p> <p>21 "QUESTION: Okay. Now, at this</p> <p>22 point in time, you had arrived at your</p> <p>23 interpretation that you discussed this</p> <p>24 morning that was different than your</p> <p>Page 202</p>	<p>1 MR. HINDERAKER: Yes. So if you</p> <p>2 can mark the transcript confidential,</p> <p>3 attorneys' eyes only, please, and then the</p> <p>4 exhibits are already similarly marked if it's</p> <p>5 appropriate for them to be so.</p> <p>6 THE VIDEOGRAPHER: The time is --</p> <p>7 MR. HINDERAKER: I'm sorry. And</p> <p>8 one last thing, we will read and sign.</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 4:04. That concludes today's deposition. We</p> <p>11 are off the record.</p> <p>12 THE COURT REPORTER: Mr.</p> <p>13 Hinderaker, what's your order of the</p> <p>14 transcript?</p> <p>15 MR. HINDERAKER: I am going to ask</p> <p>16 somebody to call you. I am going to ask</p> <p>17 Kristin Drieman to call you and tell you the</p> <p>18 specifics about that.</p> <p>19 THE COURT REPORTER: Okay. I can</p> <p>20 e-mail you.</p> <p>21 MR. HINDERAKER: It will be in the</p> <p>22 two-week time, normal time frame, but the</p> <p>23 certain requirements that we have I'd like</p> <p>24 her to tell you.</p> <p>Page 204</p>